

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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ANDRE PACHECO,

Plaintiff,

- v -

Civ. No. 9:09-CV-1419  
(DNH/RFT)

M. ZURLO, *et al.*,

Defendants.

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**APPEARANCES:**

**OF COUNSEL:**

ANDRE PACHECO  
03-A-4973  
Plaintiff, *Pro Se*  
Altona Correctional Facility  
555 Devils Den Road  
Altona, New York 12910

HON. ANDREW M. CUOMO  
Attorney General of the State of New York  
Attorney for Defendants  
The Capitol  
Albany, New York 12224

AARON M. BALDWIN, ESQ.  
Assistant Attorney General

**RANDOLPH F. TREECE**  
**United States Magistrate Judge**

**REPORT-RECOMMENDATION and ORDER**

*Pro se* Plaintiff Andre Pacheco filed this civil rights Complaint, pursuant to 42 U.S.C. § 1983, alleging Defendants violated his constitutionally protected right of access to the courts when, on two separate occasions, they tampered with his legal mail. Dkt. No. 1, Compl.; Dkt. No. 7, Am. Compl. On May 27, 2010, Defendant Department of Correctional Services (DOCS) moved for dismissal pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Dkt. No. 20. In his Response, Plaintiff concedes that DOCS is immune from suit and asks the Court to dismiss it from

this action. Dkt. No. 29 at pp. 1-2.

**ACCORDINGLY, IT IS HEREBY**

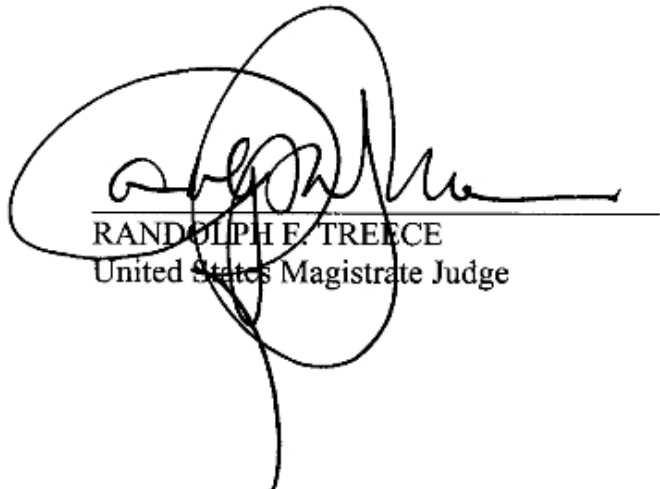
**RECOMMENDED**, based on Plaintiff's assent, that Defendant DOCS's Motion to Dismiss (Dkt. No. 20) be **GRANTED** and DOCS be **DISMISSED** from this action; and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Report-Recommendation and Order upon the parties to this action.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen (14) days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

**FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN (14) DAYS WILL PRECLUDE APPELLATE REVIEW.** *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993) (citing *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989)); *see also* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72, 6(a), & 6(e).

Date: September 29, 2010  
Albany, New York



RANDOLPH E. TREECE  
United States Magistrate Judge